IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 412 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

N J CHAVDA

Versus

CONTROLLER

Appearance:

1. Special Civil Application No. 412 of 1992

MR KR BRAHMBHATT for Petitioner.

Mr. Siraj Gori, AGP for Respondent No. 1,3

NOTICE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 21/11/2003

ORAL JUDGEMENT

The present petition is filed under Article 226 of the Constitution of India seeking direction from this Court to the respondent authorities to give actual appointment as per appointment order dated 29th January 1990 at Ann.'A' with effect from the date of appointment

order and to allow the petitioner to be joined as Junior Inspector in the Department of Weights and Measures.

2. It is the case of the petitioner that the petitioner had applied for the post of Junior Inspector in the Department of Weights and Measures and after interviews by the respondent No.2 Committee he was selected and recommended for the said post in the respondent No.1 Department. It is also the case of the petitioner that the petitioner was issued the Office Order dated 29.1.1990 giving appointment to the petitioner and directing the petitioner to undergo training for a period of one month from the date of petitioner's joining in the department. It is further the case of the petitioner that the petitioner has made an attempt to join, however the responsible officers were not present and hence the petitioner was not allowed to report for the training. The petitioner thereafter made representation to the respondent authorities. Pending the said representation, another advertisement was issued and the petitioner has applied for the post of Junior Inspector vide his application dated 25.9.1991 and pursuant to the said application the petitioner was issued the call letter dated 19.12.1991. The petitioner was however not given actual appointment because of undue pressurisation and bias against the petitioner and hence the present petition is filed seeking redressal of his grievance.

3. This Court has issued the notice on 21.1.1992 and granted ad-interim relief to the effect that one post would be kept vacant. Pursuant to the notice issued by this Court, the respondent authorities have filed their appearance and affidavit-in-reply was filed by Mr. AK Thakkar, Joint Controller (Weights & Measures), on 16.3.1992 wherein it is specifically stated that pursuant to the appointment order issued on 29.1.1990 the petitioner was supposed to report for training before 17.2.1990, however the petitioner could not report to the training till 17.2.1990 and therefore the petitioner's right to the post in question has lapsed. It was further stated in the affidavit-in-reply that since the petitioner did not report for the post one post of Junior Inspector could not be filled-up and hence it was carried forward and fresh advertisement was issued. It is the case of the respondent authorities that the petitioner has not applied pursuant to the said advertisement and hence the candidate whose name was at Sr. No. 1 on the select list has been appointed to that post on 27.1.1992. It was further stated that the petitioner has tried to mislead the Court and has surreptitiously obtained the

ad-interim relief. It was further stated that pursuant to the advertisement the department has not issued any call letters for interviews in view of the ban on recruitment imposed by the Government in view of the scarcity condition prevailing in the State.

4. After considering the said affidavit-in-reply, this Court has further passed the order on 22.6.1992 which reads as under;

> "From the affidavit-in-reply it is clear that some misstatements have been made in the petition. Not only that but at the time of argument, learned advocate made a statement that the ad-interim relief granted earlier by this Court was subsequently confirmed. When he was asked to point out when the ad-interim relief was confirmed, he was unable to do so. Thus it is clear that, as averred by the other side, the petitioner has obtained ad-interim relief by making false statements in the petition. That say is supported by the affidavit-in-reply. Hence ad-interim relief granted earlier stands vacated."

5. Mr. KR Brahmbhatt, ld. advocate appearing for the petitioner submits that though the appointment letter was issued to the petitioner the petitioner was not allowed to join duty. The petitioner thereafter made representation and pending that representation an advertisement was issued. The petitioner had applied in pursuance of the said advertisement and still his case was not considered. He has further submitted that though this Court has granted ad-interim relief in terms of keeping one post vacant on 21.1.92 the respondent authorities have filled up the post on 27.1.92. The respondent authorities have therefore acted in contravention of the order passed by this Court. Mr. Brahmbhatt has further submitted that even with regard to the petitioner's application dated 21.9.1991 till this date no post has been filled in and the petitioner's application was wrongly rejected on the ground that the petitioner was not found to be eligible. He has further submitted that if pursuant to the first advertisement he was found to be eligible and appointment order was issued, there was no reason as to why with regard to the subsequent advertisement, he was not called for interview. He has therefore submitted that the respondent authorities have acted in highhanded manner

and the petitioner being a scheduled caste candidate the respondent authorities could not deny his legitimate rights. He has therefore submitted that the petition deserves to be allowed and the petitioner's case should be considered for appointment to the post of Junior Inspector in the Weights and Measures Department.

6. Mr. Siraj Gori, learned AGP appearing for the respondent authorities has submitted that pursuant to the appointment order dated 29.1.1990 the petitioner did not remain present and hence he lost his right to be appointed to the post of Junior Inspector as the conditions precedent were not satisfied by him. He has further submitted that even with regard to the subsequent advertisement the petitioner could not be found to be eligible. He has further submitted that the post which was filled-in on 27.1.92 was not pursuant to the second advertisement dated 4.9.1991 but since it was vacant that post was filled-in. He has further submitted that the petitioner has made the false statement before the Court and obtained the order of interim relief in his favour. Since the petitioner has not come with clean hands and suppressed material facts before this Court the petitioner does not deserve for any sympathy from this Court. He has further submitted that with regard to the 2nd advertisement no post has been filled-in and even otherwise no vested right is created in favour of the petitioner seeking any appointment to the post in question pursuant to his application. In any view of the matter, the prayer made in the petition should not be granted by this Court.

7. After having heard the learned advocates appearing for the respective parties and after having considered the facts and the averments made in the petition, affidavit-in-reply and the counter-affidavit, I am of the view that the petitioner is not entitled to any relief from this Court, as, admittedly there is a dispute with regard to the fact as to whether the petitioner has reported for training pursuant to the appointment order, as on the one hand the petitioner has stated that he has tried to report for duty but he was prevented to do so, whereas on the other hand it is the say of the respondent authority that the petitioner had not reported pursuant to the respondent's order, and the respondent waited till 17.2.1990. This fact was not denied by the petitioner in his affidavit-in-rejoinder. Therefore, it appears to the Court that there are words against words and even there was dispute with regard to this aspect of the matter. Such a disputed question cannot be entertained by this Court in a petition under Article 226 of the Constitution

of India. With regard to the 2nd advertisement, there is a dispute as to whether the petitioner has applied pursuant to the 2nd advertisement or the letter dated 25.9.1991 written by the petitioner was merely an intimation stating that pursuant to the appointment order he should be given the posting in the respondent department. It is the say of the respondent authorities that the petitioner did not apply with regard to the fresh advertisement and even otherwise no call letter was issued on any one because of the ban on the recruitment. Even if it is assumed that the petitioner has applied on 25.9.1991 pursuant to the 2nd advertisement, since no call letter was issued and no appointment order was made, the petitioner is not entitled to appointment on the basis of the said application of 25.9.1991. Even while passing the order dated 22.6.1992 vacating the interim relief, this Court has observed that the petitioner has suppressed material facts and obtained interim relief in his favour. All these facts would clearly indicate that the petitioner has misused this forum for seeking order in his favour by not placing the correct facts before the Court. Since there being disputed questions of facts and the facts stated and the averments made in the affidavit-in-reply by the respondent authorities were not controverted by the petitioner even in the counter-affidavit, this Court is of the view that the petitioner is not entitled to any relief from this Court. Accordingly, the petition is dismissed. Rule is discharged without any order as to costs.

[K.A. Puj, J.]

rmr.